

WD 34 file



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

March 30, 2006

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

KENT W FOSTER
HOLDEN KIDWELL HAHN & CRAPO
1000 RIVERWALK DR STE 200
IDAHO FALLS ID 83402-3304

BOB DUKE
WATERMASTER
WATER DISTRICT 34
PO BOX 53
MACKAY ID 83251-0053

Re: Request to Remove Watermaster of Water District no. 34, Big Lost River

Dear Mr. Foster and Mr. Duke:

This letter acknowledges receipt of a letter from Kent Foster to Karl Dreher, the Director of the Idaho Department of Water Resources (IDWR), dated March 17, 2006. The letter requests, on behalf of several Big Lost River water right holders, "the investigation by the Director contemplated by subparagraph (9) of Idaho Code, § 42-605, any hearing that may be deemed necessary by the Director, and ultimately, the removal of the Watermaster elected at said annual meeting."

IDWR interprets the letter as a request to remove Bob Duke, recently elected Watermaster for Water District no. 34, Big Lost River. Idaho Code § 42-605 requires that the Director hold a hearing when he receives a request to remove the watermaster. Following a hearing, IDWR is required to render a decision. Because a hearing and a decision are required, the request for removal creates a contested case before IDWR.

The Director asked that I recuse myself from any direct factual investigation or any discussions of specific facts with the water users in Water District no. 34 or IDWR staff, anticipating I will be appointed as the hearing officer for the contested case. The requested investigation will be conducted within the context of the contested case so all parties can be assured the hearing officer is not participating in any fact finding or factual review during the investigation. Nick Miller, an IDWR engineer, will be the IDWR contact person during the investigation.

In addition to the express directive in Idaho Code § 42-605 that the Director conduct an investigation, the hearing officer in a contested case also has the authority to request staff memorandum from IDWR employees. Because I anticipate being appointed as the hearing officer, I will request staff memorandum that explains and summarizes the investigation. I expect IDWR to conduct the investigation as follows.

Messrs. Foster & Duke

March 30, 2006

Page 2

- April 7, 2006 – Deadline for Nick Miller, to meet with Bob Duke to review the water district records and identify water delivery and accounting issues.
- End of April 2006 – IDWR will meet with the Water District no. 34 Advisory Committee and other concerned water users to review water measurement and regulation records, measurement and regulation record evaluations, accounting computations, and other related information. The purpose of the meeting is to discuss information gathered during the Department's initial review of Water District records and to seek input and analysis from the advisory committee and other concerned water users. The Director has expressed a preference for holding this meeting in Boise. Prior to this meeting, the Department will determine whether legal counsel will be provided for Bob Duke during the duration of the contested case.
- May 15, 2006 – IDWR will complete and distribute a staff memorandum summarizing its investigation.

After submittal of the staff memorandum, I will conduct a one-day hearing during June 6-9, or June 13-16, 2006. The hearing will be conducted in the Big Lost River Basin. Please identify days within this time period that you will not be available. I will send out a notice of hearing and an order appointing me as the hearing officer following the receipt of your unavailable dates.

I encourage you and all water users within the Big Lost River Basin to participate in the dialogue during IDWR's investigation. Perhaps discussions between the waterusers, the watermaster, and IDWR can resolve issues presently in dispute, reduce the number of issues that must be resolved at the hearing, or completely obviate the need for a hearing.

Sincerely,



Gary Spackman

- c. Water District 34 Advisory Committee Members
Big Lost River Irrigation District
IDWR – Eastern Region
Nick Miller, Water Distribution